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<b>RATEPAYERS APPEAL OF THE</b>	<b>§</b>	<b>BEFORE THE STATE OFFICE</b>
<b>DECISION BY WINDERMERE</b>	<b>§</b>	
<b>OAKS WATER SUPPLY</b>	<b>§</b>	<b>OF</b>
<b>CORPORATION TO CHANGE</b>	<b>§</b>	
<b>WATER AND SEWER RATES</b>	<b>§</b>	<b>ADMINISTRATIVE HEARINGS</b>

**AMENDED AGREED MOTION TO RECONSIDER EVIDENTIARY RULINGS**

On April 27, 2020, Josephine Fuller, individually and on behalf of the ratepayers of Windermere Oaks Water Supply Corporation (Petitioners or Ratepayers), filed a petition under Texas Water Code (TWC) § 13.043(b) appealing the decision by Windermere Oaks Water Supply Corporation (Windermere) to change its water and sewer rates. On April 30, 2020, Petitioners filed an amended petition. On May 27, 2020, Windermere filed its response to the petition. On October 19, 2022, the State Office of Administrative Hearings (SOAH) administrative law judges filed SOAH Order No. 24, establishing a deadline of October 26, 2022, for the Ratepayers to file clarification regarding their requests for reconsideration of evidentiary rulings. Therefore, this pleading is timely filed.

**I. MOTION TO RECONSIDER EVIDENTIARY RULINGS**

Over the course of this docket, numerous evidentiary objections made by Windermere were sustained on the basis that the subject of those objections was not relevant to evaluating the reasonableness of Windermere’s rates. The tables below indicate the documentary and testimonial evidence that was improperly excluded, which the Ratepayers now request be admitted into the record of this proceeding.

**A. Documentary Evidence**

Document	Objection/Withdrawn	Argument why it was wrong to exclude	Date available to board	Why it is necessary to have in the record
Ratepayers' Ex. 19	Wednesday 12/1/2021 Page 139, line 2 Page 141 line 1	The objection was to relevance	Prior to February 2020 when the rates were approved by the Windermere Board.	That Windermere was never more than a nominal party against whom no relief was sought is clearly relevant to a determination whether the board's substantial expenditure of company resources for legal fees to "defend" the company were reasonable or prudent.

**B. Testimonial Evidence**

Testimony from	Location	Category	Ratepayer Question	Objection	Why Ruling Was Incorrect
Offer of Proof No. 1 From Ratepayers	Wednesday, 12/1/2021 Transcript Page 49, lines 5-7 and All of Pages 86-92	Assets of Windermere	Question to Burris on Assets in the Airport.	Windermere	This information is relevant to determining the access to funds the board had at the time they decided to raise the rates - the remaining acreage owned by Windermere.
Offer of Proof 2 No. 2 From Ratepayers	Wednesday, 12/1/2021 Transcript Page 135 lines 12-16 All of Pages 236-238	Legal Expenses	Question to Nelson regarding Windermere litigation	Windermere	This information is relevant to determining the just and reasonable legal expenses.
Gimenez	Thursday, 12/2/2021 Transcript Page 381, Lines 15-22	Assets of Windermere	When the Company when the board found itself at the end of 2019 in the position where it had basically, spent all the money there was, all the cash there was, on legal fees, why was it that there were no steps taken to market the 6.19 acres in the airport?	Windermere	The information is relevant to determining why at the end of 2019 when the Windermere board spent all their money on legal fees and needed to raise rates due in part to legal expenditures why were there no steps taken to market their 6.19 acres to pay for legal expenses? Did Windermere have other sources of income to pay down debt, specifically legal expenses? This determines just and reasonable rates when the board is sitting on valuable assets no longer needed to operate the water and sewer system.  If the question is allowed would be able to further identify the just and reasonable legal fees expended in 2019.

Gimenez	Thursday 12/2/2021, Transcript Page 288, Lines 2-18	Purpose of Legal Expenses in 2019 – Just and Reasonable	Confirm that the TOMA Integrity Plaintiffs never asked the Court to require the company to sue Dana Martin, or her company Friendship Homes and Hangars or anybody else? Ms. Allen moved to strike the testimony of Mr. Gimenez concerning these lawsuits as he testified to this in his rebuttal testimony. If he has no personal knowledge, he should not be able to include this in rebuttal testimony.	Windermere	<p>The information is relevant because the board’s stated rationale for the enormous legal expenditures was to prevent the plaintiff members from requiring the company to sue Martin and/or Friendship, as the company could not afford to do so and might be exposed to liability if it did. That is nonsense. No one ever sought to require the company to sue anyone. If the question had been allowed, the Commission would be able to further pay for legal expenses? Did Windermere have other sources of income to pay down debt, specifically legal expenses? This determines just and reasonable rates when the board is sitting on valuable assets no longer needed to operate the water and sewer system.</p> <p>If the question is allowed would be able to further identify the just and reasonable legal fees, if any, expended in 2019.</p>
Nelson	Wednesday, 12/1/2021 Transcript Page 164, Lines 20-21	Purpose of Legal Expenses in 2019 – Just and Reasonable	Attorneys were busy during that time making a deal with Ms. Martin, isn’t that, right?	Windermere	The information is relevant because, if the question had been allowed, the Commission would be able to further identify actions taken by the board and further identify the just and reasonable legal fees expending in 2019.

Nelson	Wednesday, 12/1/2021 Transcript Page 132, Lines 18-23	Purpose of Legal Expenses in 2019 – Just and Reasonable	At the time the board decided to approve the payment of legal expenses to oppose relief in the TOMA Integrity	Windermere	The information is relevant because, if the question had been allowed, the Commission would be able to further identify actions taken by the board and further identify the just and reasonable legal fees, if any, expended in 2019. Among other things, it bears directly on the reasonableness and prudence of the decision to expend enormous company resources to prevent the company from recovering for the damage it sustained as a result of such wrongful conduct.
Nelson	Wednesday, 12/1/2021 Transcript Page 163, Lines 5-7	Purpose of Legal Expenses in 2019 – Just and Reasonable	Mr. Nelson, isn't it true that in October of 2019 the Company made a deal with Ms. Martin as a result of a mediation in the lawsuit?	Windermere	The information is relevant because, if the question had been allowed, the Commission would be able to further identify actions taken by the board and further identify the just and reasonable legal fees expending in 2019.

Burris	Wednesday 12/1/2021 Transcript Page 62 lines 3-25 Page 63 lines 1-8	Real Estate - 2016 sale of land to Dana Martin/Friendsh ip Homes and Hangar	Question regarding efforts related to real estate and recovery of property opposed to using corporation funds on legal expenses to ensure land deal stays intact and property is not returned to Windermere	Windermere	This information is relevant to determining whether it was reasonable and proper for the Board to pursue its litigation strategy and adopt the appealed rates.
Burris	Wednesday 12/1/2021 - Transcript, Page 47 line 12 Page 48 line 17	Windermere assets	Question regarding value of remainder of land in Spicewood airport area	Windermere – Relevance	Windermere's own assessment of the substantial diminution in value to the remainder resulting from the land transaction is clearly relevant to a determination whether the expenditures for legal services to keep the transaction intact were reasonable or prudent. Further, any determination concerning whether or to what extent the Commission's action might impact Windermere's financial integrity necessarily requires a complete record of its inventory of assets.
Nelson	Wednesday 12/1/2022 Transcript Page 134, lines 6-14 Page 134, lines 15-25 Page 135 lines 1-19	Real Estate - 2016 sale of land to Dana Martin/Friends hip Homes and Hangar	Question regarding property appraisal amount following board approved forensic appraisal and attorney demand letter.	Windermere – outside the scope	The information is relevant because, if the question had been allowed, the Commission would be able to further identify actions taken by the board and further identify the just and reasonable legal fees expending in 2019 especially when Windermere's Attorney send Dana

					Martin/Friendship Homes and Hangar a demand letter purporting in detail the loss to the company over the land deal.
Nelson	Wednesday 12/1/2022 Transcript Page 136, lines 7-13 Page 137 lines 6-20	Real Estate - 2016 sale of land to Dana Martin/Friendsh ip Homes and Hangar	Question regarding litigation in 2019 specifically question related to a petition and intervention filed in the Double F lawsuit.	ALJ – exceeds scope of what hearing is about	The information is relevant because, if the question had been allowed, the Commission would be able to further identify actions taken by the board and further identify the just and reasonable legal fees expending in 2019 especially when Plaintiff's in Double F sought no monetary relief only for the property to be returned to Windermere to allow an open sale to the highest bidder as opposed Windermere expended hundreds of thousands of dollars to prevent this from happening. Prudent behavior of Windermere Board as to just and reasonable legal expenses. Additionally, Windermere must show the appealed rates recover only its reasonable and necessary expenses. <sup>1</sup> Reasonable and necessary expenses include only those costs of service that were prudently incurred. <sup>2</sup> Whether outside legal costs in civil actions meet this standard must be determined based upon the nature and circumstances of

<sup>1</sup> *Petition of Paloma Lake Municipal Utility District No. 1 et al., Appealing the Ratemaking Actions of the City of Round Rock in Travis and Williamson Counties*, Docket No. 48836, Order on Appeal of SOAH Order No. 17, p. 3.

<sup>2</sup> *Gulf States Utilities Co. v. Public Utility Com'n of Texas*, 841 S.W.2d 459 (Tex. App.—Austin 1992, writ denied).



					the specific litigation involved. <sup>3</sup> For example, legal expenses that could have been avoided through prudent management have been disallowed. <sup>4</sup> It is axiomatic that the Commission is entitled to a full and fair record concerning the nature and circumstances of the litigation and other legal proceedings for which Windermere seeks to pass on its costs here, and not just the one-sided information Windermere wishes to put into the record.
Nelson	Wednesday 12/1/2021 Transcript Page 161 lines 11-25 Page 162 lines 1-25 Page 163 lines 8-16	Real Estate – 2016 sale of land to Dana Martin/Friendship Homes and Hangar	Question regarding 2019 Negotiations with Martin Friendship Homes and Hangar, Windermere, and their attorneys regarding the 2016 real estate land transaction.	Windermere - Relevance	This information is relevant to determining whether it was reasonable and proper for the Board to pursue its litigation strategy and adopt the appealed rates.
Nelson	Wednesday 12/1/2021 Transcript Page 164, lines 13-25	Real Estate – 2016 sale of land to Dana Martin/Friendship Homes and Hangar	Question regarding 2019 Negotiations with Martin Friendship Homes and Hangar, Windermere, and their attorneys regarding the 2016 real estate land	Windermere - Relevance	This information is relevant to determining whether it was reasonable and proper for the Board to pursue its litigation strategy and adopt the appealed rates.

<sup>3</sup> See, e.g., *State ex rel. Utilities Com'n v. Public Staff, North Carolina Utilities Com'n*, 317 N.C. 26, 38-40, 43 S.E.2d 898, 906-8 (1986), and authorities cited therein.

<sup>4</sup> *In re Texas Electric Service Co.*, Docket No. 2606 (1979).

			transaction.		
Nelson	Wednesday 12/1/2021 Transcript Page 165, lines 1-25	Real Estate - sale of land to Dana Martin/Friendship Homes and Hangar	Question regarding 2019 Negotiations with Martin Friendship Homes and Hangar, Windermere, and their attorneys regarding the 2016 real estate land transaction.	Windermere - Relevance	This information is relevant to determining whether it was reasonable and proper for the Board to pursue its litigation strategy and adopt the appealed rates.

Ratepayers respectfully request that the ALJs reconsider the exclusion of all testimonial and documentary evidence that was excluded related to the external litigation costs included in the appealed rates. Because these exclusions were numerous and wide-ranging, Ratepayers recognize that the lists above may not be comprehensive. Moreover, simply admitting the evidence that was excluded is not an adequate remedy. The ALJs insisted at a point that Ratepayers cease their questioning concerning the outside legal costs. Concerned for what the consequences of noncompliance might be, Ratepayers did as they were instructed and stopped their efforts to fully develop the evidentiary record concerning the reasonableness and prudence of the outside legal costs allegedly included within the appealed rates.

Windermere must show the appealed rates recover only its reasonable and necessary expenses.<sup>5</sup> Reasonable and necessary expenses include only those costs of service that were prudently incurred.<sup>6</sup> This standard applies to all costs the utility chooses to include within its rates, including outside legal costs in civil actions. Legal costs that do not meet the standard must be disallowed.<sup>7</sup> For example, legal expenses that could have been avoided through prudent management must be disallowed.<sup>8</sup> The vast majority of the excluded evidence is information concerning the nature and circumstances of the matters for which Windermere incurred the outside legal costs included within the appealed rates. Such information is necessary for a proper analysis of whether those costs are costs of service and were prudently incurred.

## II. CONCLUSION

For the reasons detailed above, Ratepayers move, on behalf of themselves and Staff, that the rulings excluding the listed documents and testimony be reversed and that the information be admitted into the record of this proceeding.

Date October 26, 2022

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<sup>5</sup> *Petition of Paloma Lake Municipal Utility District No. 1 et al., Appealing the Ratemaking Actions of the City of Round Rock in Travis and Williamson Counties*, PUC Docket No. 48836, Order on Appeal of SOAH Order No. 17, p. 3.

<sup>6</sup> *Gulf States Utilities Co. v. Public Utility Com'n of Texas*, 841 S.W.2d 459 (Tex. App.—Austin 1992, writ denied).

<sup>7</sup> See, e.g., *State ex rel. Utilities Com'n v. Public Staff, North Carolina Utilities Com'n*, 317 N.C. 26, 38-40, 43 S.E.2d 898, 906-8 (1986), and authorities cited therein.

<sup>8</sup> *In re Texas Electric Service Co.*, Docket No. 2606 (1979).

Respectfully submitted,  
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**CERTIFICATE OF SERVICE**

I certify that unless otherwise ordered by the presiding officer, notice of the filing of this document was provided to all parties of record via electronic mail on October 26, 2022, in accordance with the Second Order Suspending Rules, issued in Project No. 50664.

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